Spring 2012

Plan Errors:

- SEP plans
- SIMPLE IRA plans
- SARSEP plans
- 5500-EZ LESE Project - EP Exam Director Monika Templeman discusses common contribution limit errors in Form 5500EZ filers
- Pre-approved defined benefit plans - Missed the April 30 deadline to adopt for EGTRRA? Use our submission kit to fix it

Plan Operations:

- SIMPLE IRA plans - participants may transfer their funds from a designated financial institution to one that they choose
- 403(b) Plans Phone Forum on June 12 - operating under the written plan requirements and common issues
- Required Minimum Distributions - the plan must follow its terms when making RMDs from rollover contributions

Retirement Savings Tips:

- Matching Contributions - don't walk away from free money in your 401(k) or SIMPLE IRA plan
- Age Matters - in your retirement plan - your age affects what actions you may take in your retirement plan

Upcoming Conferences:

- ERPA Conference (June 7-8)
- IRS Tax Forums (various dates)

IRS's Advisory Committee on Tax Exempt and Government Entities (ACT) - ACT to submit recommendations at June meeting and will introduce seven new panel members

Updated:

- *Designated Roth Accounts*, Publication 4530
- Enrolled Retirement Plan Agent Web pages

Recurring Columns:

- Mark Your Calendar
- DOL News

EPCU Finds Errors in SEP Plans

The Employee Plans Compliance Unit's SEP Plan Compliance Check project found errors made by both SEP plan sponsors and the financial institutions filing the SEP-IRA contribution information.

Project results

Responses showed that SEP plan sponsors are:

- exceeding annual contribution limits
- excluding eligible employees, including those of controlled groups

Responses also showed that financial institutions aren't properly completing Form 5498, *IRA Contribution Information* (2012 instructions), for SEP-IRAs.

Plan sponsor errors

Excess plan contributions:

- made contributions for themselves and/or family members in excess of the annual limit
- failed to remove plan earnings in addition to excess SEP contributions
- failed to consider earnings when removing excess SEP contributions
- participated in a SEP and in another related plan and didn't combine contributions from both plans when determining annual limits

Self-employed SEP plan sponsors:

- improperly deducted too much of their traditional IRA contributions
- contributed nondeductible IRA contributions but didn't report them by filing Form 8606, *Nondeductible IRAs*, with their tax return

Participation errors:

- permitted family members to enter the SEP sooner than other employees who met the eligibility requirements
- included only highly compensated employees and their spouses
- excluded eligible employees of a company in employer's controlled group
- maintained a SEP plan for highly compensated employees and a different plan for other employees

Miscellaneous errors:

- deducted employer contributions when no contributions were made
- made larger contributions to owner and/or family members than to other participants
- incorrectly reported the financial institution holding the SEP plan assets as the plan sponsor
- treated a withdrawal and redeposit to same account within 60 days as a rollover contribution
- SEP plan had no plan sponsor

SEP plan sponsors can prevent errors by knowing SEP plan requirements, including:

- following the basic steps in establishing a SEP plan,
- including all eligible employees in the plan, and
- not exceeding annual contribution limits.

Form 5498 errors

- rollover contributions erroneously shown as SEP contributions in Box 8 but should have been reported in Box 2.
- transferred contributions used to purchase annuities reported by the receiving insurance companies as SEP contributions in Box 8.

The financial institutions holding SEP-IRAs, and reporting the SEP plan information to the IRS and to each plan participant on Form 5498, can avoid these errors by following the instructions when completing the form.

Fixing SEP errors

EPCU encouraged SEP plan sponsors who had operational defects during the compliance check (without examination of the books and records of the plan sponsor) to voluntarily correct them using the Employee Plans Compliance Resolution Program (EPCRS).

In many cases, plan errors were corrected:

- Plan sponsors made additional contributions for excluded employees
- Plan participants removed excess contributions and earnings
- Plan participants amended their Forms 1040 for improperly deducting SEP IRA contributions
- SEP-IRA holders issued corrected Forms 5498

EPCU reminded SEP plan sponsors to make appropriate correction for future years and referred potentially noncompliant plans for examination.

If you have questions about the EPCU SEP plan project, email us and we will answer questions about how the project relates to your situation. Please include "SEP" in the subject line.

Additional Resources:

- SEP Plan Web pages
- SEP FAQs
- SEP Checklist
- SEP Fix-It Guide
- Publication 4333, *SEP Retirement Plans*
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

SIMPLE IRA Plans Examination Project

Employee Plans examination of SIMPLE IRA plans over the past eight years has found that plan sponsors are making common operational mistakes. If a plan failure is significant:

- the plan will be ineligible for salary deferrals, and
- employer plan contributions will be nondeductible (Revenue Procedure 2008-50)

Common SIMPLE IRA plan failures found during examination

Plan sponsor:

- wasn't eligible to sponsor a SIMPLE IRA plan because it had:
  - more than 100 employees (IRC section 408(p))
  - another retirement plan
- didn't follow the SIMPLE IRA plan eligibility requirements:
  - excluded employees who had met the eligibility requirements
    - two years of prior service with $5,000 in compensation and a reasonable expectation to earn $5,000 in the current year, or
    - as elected in the plan document
  - allowed non-employee private contractors to participate in the plan
  - didn't follow plan terms for eligibility selected in the adoption agreement
  - used an arbitrary definition of eligible employee such as "part-time" and then excluded these employees
- didn't make the right matching contributions
  - didn't give the match elected in the adoption agreement
  - didn't give the same percentage match to all employees
  - didn't include bonuses paid in compensation for match
  - incorrectly reduced the match in more than 2 out of 5 years (IRC 408(p)(c)(ii))
- failed to update the plan document for EGTRRA (see Revenue Procedure 2002-10)
  - by using the latest IRS model:
    - Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - Not for Use With a Designated Financial Institution* (Rev. March 2012), or
    - Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - for Use With a Designated Financial Institution* (Rev. March 2012)
- failed to use the correct compensation for salary deferrals and employer contributions

    - excluded bonuses
    - included section 125 cafeteria plan benefits
    - used a definition of compensation other than the plan's definition
    - limited a participant's compensation to the annual compensation limit when calculating the matching contribution (IRC section 401(a)(17)(B)).

- failed to deposit salary deferrals on time
    - didn't deposit salary deferrals within 30 days after end of month (IRC section 408(p)(5)(a)).
- failed to give employees annual notices
    - didn't give, or document giving, employees the annual election to change their salary deferrals 60 days before the start of the plan year
    - didn't document an employee's election not to make salary deferrals
- didn't have a signed SIMPLE IRA plan document
- reported incorrect salary deferral amount on Form W-2, Box 12
- allocated matching contributions to highly compensated employees or officers in excess of 3%
- terminated their SIMPLE IRA plan during the calendar year - you can only terminate a SIMPLE IRA plan at the end of the calendar year.

Tips

SIMPLE IRA plan sponsors can prevent these common errors by knowing their plan's requirements and:

- Following the basic steps in establishing a SIMPLE IRA plan
- Reviewing the IRS SIMPLE IRA Plan Fix-It Guide,
- Updating the plan for the EGTRRA tax provisions
- Keeping a copy of the plan document on hand to refer to the key plan provisions
- Knowing the rules for decreasing or changing the plan's matching contribution

If you find errors, you can correct them by using our Employee Plans Compliance Resolution System (EPCRS) and avoid these consequences.

Employee Plans estimates there are approximately 280,000 SIMPLE IRA plans based on what is reported on Form W-2 Box 12 for plan salary deferrals.

Additional Resources:

- FAQs: SIMPLE IRA
- SIMPLE IRA Checklist
- Publication 4334, *SIMPLE IRA Plans for Small Businesses*
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

SARSEP Plans Examination Project

Employee Plans' active examination program has reviewed SARSEP IRA plans' compliance with Internal Revenue Code section 408(k) for about ten years. Our examinations show that plan sponsors are making common operational failures. If a plan failure is significant:

- the plan will be ineligible for salary deferrals, and
- employer plan contributions will be nondeductible (Revenue Procedure 2008-50)

Common SARSEP plan failures found during examinations

- Plan's annual deferral percentage test for eligible salary deferral contributions wasn't performed or had failed in several tax years (IRC section 408(k)(6)(A)(iii))

Plan sponsors:

- didn't update the plan for EGTRRA, or adopt the IRS model plan Form 5305A-SEP, *Salary Reduction Simplified Employee Pension - Individual Retirement Accounts Contribution Agreement*, with the June 2006 or later revision date but used the higher contribution limitations from EGTRRA (Revenue Procedure 2002-10)
- failed the 50% participation rule because at least 50% of the eligible employees in the plan didn't make salary deferrals (IRC section 408(k)(6)(A)(ii))
- didn't provide top-heavy minimum benefits required by the IRS model SARSEP plan or IRC section 416
- didn't deposit salary deferrals on time - within 30 days after end of month (IRC section 408(p)(5)(a)). Note: This failure can also be considered a prohibited transaction
- didn't have a signed SARSEP plan document
- weren't eligible to sponsor a SARSEP plan because they:
    - exceeded the maximum number of 25 employees (IRC section 408(k))
    - had another IRC 401(a) plan
    - were an IRC section 501(c) tax-exempt organization, which isn't allowed to sponsor a SARSEP plan
- didn't allow employees who met the eligibility requirements (age 21, up to 3 of any prior 5 years service with $550 in compensation or as elected in the plan document) to timely participate in the plan
- made ineligible matching contributions
- allowed highly compensated employees to make salary deferrals in excess of the annual limits

Tips

SARSEP plan sponsors can prevent these common errors by knowing their plan's requirements and:

- following the basic steps in operating a SARSEP plan
- reviewing the IRS SARSEP Fix-It Guide

- updating their plan for the EGTRRA provisions
- keeping a copy of their plan document on hand to refer to the key plan provisions
- performing all required annual testing for the plan

Use our tips to review your plan. If you find errors, you can correct them by using our Employee Plans Compliance Resolution System (EPCRS) to avoid these consequences.

The Small Business Jobs Protection Act of 1996 replaced SARSEP plans with SIMPLE IRA plans. No new SARSEP plans could have been started after December 31, 1996, but existing SARSEP plans were allowed to continue operating after this date. The IRS estimates there are currently 25,000 to 30,000 active SARSEP plans.

Additional Resources:

- FAQs: SARSEPs
- SARSEP Checklist
- Publication 4336, *SARSEP for Small Businesses*
- Publication 4407, *SARSEP - Key Issues and Assistance*
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

Desk Side Chat…With Monika Templeman - Form 5500EZ and Participant Contribution Limitations

In each issue, Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics for discussion by emailing her at: RetirementPlanComments@irs.gov.

Last summer, I discussed our Learn, Educate, Self-Correct, and Enforce (LESE) projects. Now I'd like to share the results from our Form 5500-EZ Participant Contribution Limitations project and explain how you can use these results to help keep your plan in compliance.

Employee Plans looked at Forms 5500-EZ and found that some defined contribution plans appeared to have exceeded the dollar limit for employer contributions under Internal Revenue Code section 415(c), which limits the amount of contributions and other annual additions allocated to each participant during the plan's limitation year. We wanted to determine if these entries were errors or if the employer contributions actually exceeded the 415 limit.

We included plans that appeared to exceed the 415 limit in a group of potential selectees for this project. We then randomly chose over 50 plans that filed Forms 5500-EZ from this pool for examination.

Based on our examination results, we found the following common errors:

- **415 limit excesses** in about 12% of the plans we examined, because the sponsor:
    - lacked practices and procedures to verify whether participants exceeded the limits
    - failed to include designated Roth contributions as annual additions

- **Nondeductible employer contributions** in about 12% of the plans, because the sponsor:
    - failed to properly monitor contributions to ensure that amounts allocated to individual participants didn't exceed the 415 limit
    - didn't confirm that the contribution made for the tax year was within the IRC section 404 deduction limit

These errors led to our examiners soliciting 37 Forms 5330 and securing excise taxes equal to 10% of the nondeductible contributions.

- **Late or Non-Amenders** in approximately 8% of the plans, because the plan sponsor didn't timely amend its plan for current law.

Based on the results of this LESE project, I suggest you review your plan for potential document and operational errors. Performing an internal "check-up" is an excellent way to confirm that these common errors don't jeopardize your plan's qualified status. If you find mistakes, visit our Correcting Plan Errors page to see if you are eligible for the self-correction program. If you aren't eligible for the SCP, learn how to submit an application for our Voluntary Correction Program.

Remember, the final "E" in LESE is for "Enforce." Employee Plans revenue agents will focus on errors found in these examination projects to determine if other plans have the same type of errors. It's better for you, both in terms of time and money, to find and correct the errors on your own. With that goal in mind, be sure to check out our Fix-It Guides to learn how to find, fix and avoid common plan mistakes.

We're Glad You Asked! - Form 5305-SIMPLE

Our company adopted a SIMPLE IRA plan with a designated financial institution using Form 5305-SIMPLE. Can the participants choose a different financial institution for their SIMPLE IRA accounts?

Yes, participants can transfer their SIMPLE IRA account balances to another financial institution without costs or penalties. However, you must continue depositing future employer and employee SIMPLE IRA plan contributions to their SIMPLE IRA at the designated financial institution.

By using Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - for Use With a Designated Financial Institution,* to establish your plan, you and the designated financial institution agreed:

- you would deposit all your SIMPLE IRA plan contributions to SIMPLE IRAs established at the designated financial institution;
- plan participants could transfer funds from their SIMPLE IRAs without cost or penalty to another SIMPLE IRA or, after a 2-year period of participation, to any IRA at another financial institution; and
- you, as plan sponsor, would give each participant a written notice describing the transfer request procedures.

Additional Resources:

- Notice 98-4, *SIMPLE IRA Plan Guidance*
- SIMPLE IRA plan Web pages
- Publication 590, *Individual Retirement Arrangements (IRAs)*
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

We're Glad You Asked! - Required Minimum Distributions

Earlier this year, our company hired a 72-year-old employee who received a required minimum distribution for 2012 from his previous employer's plan and then rolled over his remaining account to our 401(k) plan. Does our plan have to make required minimum distributions to him while he is an employee?

Whether your 401(k) plan has to make required minimum distributions to this employee depends on:

- the terms of your plan, and
- whether the employee owns 5% or more of your company.

Terms of the plan

If the terms of your plan allow employees over 70½ to delay required minimum distributions until they no longer work for your company, then you don't need to make these distributions to the employee until that time, unless he owns 5% or more of your company.

If the terms of your plan call for you to make required minimum distributions to employees over 70½ even if they continue working for your company, then you must make these distributions.

Owner of 5% or more of business

If the employee is a 5% or more owner of your business, then you must make required minimum distributions even while he continues to work for your company.

Making required minimum distributions

When your plan must make required minimum distributions to the employee, you must:

- make these distributions by December 31 for each year; and
- calculate the amount of each year's distribution by dividing:
  - the employee's entire plan account balance (including rollover accounts) as of December 31 of the preceding year, by
  - the distribution period that corresponds with the employee's age (and spouse's in some cases) in:
    - the Uniform Lifetime Table (Table III in, Publication 590, *Individual Retirement Arrangements (IRAs)*; or
    - the Joint Life and Last Survivor Expectancy Table (Table II in Publication 590) if the employee's spouse is his sole beneficiary and is more than 10 years younger than him.

Required minimum distribution for 2012

Despite your plan's terms or if the employee owns 5% of more of your company, your plan wouldn't make a required minimum distribution for 2012 to the employee. This is because the employee's account balance in your plan was zero at the end of 2011.

Additional Resources:

- Required Minimum Distributions Web page
- FAQs: Required Minimum Distributions
- RMD Comparison Chart (IRAs vs. Defined Contribution Plans)
- Revenue Ruling 2004-12
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

Matching Contributions Help You Save More for Retirement

You may be walking away from free money by not contributing to your employer-sponsored retirement plan. Many retirement plans, such as SIMPLE IRAs and 401(k)s, provide that your employer will match some portion of the amount you contribute to your retirement account. The plan document and the summary plan description will state the conditions for you to receive matching contributions.

Matching contributions:

- are contributions your employer makes to your retirement plan account if you contribute to the plan from your salary,
- don't reduce the amount you can contribute to the plan from your salary,
- grow tax-free while in the plan, and
- are taxable only when withdrawn from the plan.

An example of a 401(k) plan matching formula is 50% of your contributions up to 5% of your annual salary. For 2012, only the first $250,000 of your salary can be used for plan purposes (subject to cost-of-living adjustments in future years).

Example 1: You contribute $1,200 from your $30,000 annual salary to your company's 401(k) plan. Your employer's 50% match on your contributions up to 5% of your salary means an additional $600 (50% x $1,200) would be added to your retirement account for the year.

Example 2: You contribute $2,000 from your $30,000 annual salary to your company's 401(k) plan. Your employer's 50% match on your contributions up to 5% of your salary means an additional $750 ($1,500 X 50%) would be added to your retirement account for the year. Note, that the matching contribution is not $1,000 because the plan's match is capped at 50% of the contributions you make up to 5% of your salary ($30,000 x 5% = $1,500 and $1,500 X 50% = $750).

How do I receive matching contributions?

You must participate and contribute to the plan from your salary. Generally, the more you contribute to the plan, up to the plan's match limit, the more you receive in matching contributions.

How do I find out about my plan's matching contributions?

The retirement plan information your employer gave you will tell you how long you have to work before receiving these contributions, the matching formula and how much you have to contribute to fully benefit from the match.

Additional Resources:

- Retirement Topics: Contributions
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

Enrolled Retirement Plan Agent Conference

The Enrolled Retirement Plan Agent Conference, co-sponsored by the American Institute of Retirement Education and the IRS, will be held at the Hyatt Regency Washington on Capitol Hill, Washington, D.C. on June 7-8.

This is the first and only conference of its kind: Designed by ERPAs for ERPAs.

Topics will include:

- Washington Update
- Navigating the IRS
- Case Studies: Corrections and Troubleshooting Plan Problems
- Required Minimum Distributions and Advanced Beneficiary Issues
- Affiliated Service Groups
- Plan Design and Best Practices
- Preparer Tax Identification Numbers (PTIN)
- Ethics
- Ask the Experts: ERPA Style

Speakers are ERPAs, retirement plan professionals, government executives and employee plans specialists.

The IRS will host an exhibit booth, providing Employee Plans publications and other information to conference attendees.

Register and learn more about the conference at: www.erpaconference.org.

IRS Nationwide Tax Forums

Employee Plans and Exempt Organizations will participate in the IRS Nationwide Tax Forums starting this June. The three-day forums are scheduled in six cities and will provide seminars, workshops, and focus groups for tax professionals. More than 17,000 people attended the forums last year. In addition to getting the latest tax information, tax professionals can earn Continuing Professional Education credits.

This year, EP will present two seminars. The first, “A Taxing Matter - Retirement,” will cover tax issues affecting retirement, including:

- Types of distributions
- Working after “retirement”
- How distributions may affect taxability of your Social Security benefits
- Form 1099-R codes

- Special situations involving required minimum distributions

The second seminar, "A Crash Course in Retirement Plan Contributions in 3D," will explain the mechanics of contributing to a SEP, SIMPLE IRA, 401(k) or one-participant retirement plan and will give examples of:

- What compensation to use to calculate the contribution
- How to calculate the contribution for a Schedule C (self-employed) participant
- How to calculate the contribution for an employee who is covered by plans of two employers (related and unrelated)
- What to do about mid-year hires and terminations
- How contributions to a retirement plan may affect the deduction of traditional IRA contributions

EO's seminar is titled, "Heads Up! Keeping Current on Exempt Organizations." Topics this year include basic information on how to apply for tax-exempt status, the benefits of the new SelectCheck search tool, two new tax credits worth knowing about and an update on education and outreach activities. EO will also repeat its popular workshop on the latest changes in Form 990 and tips on how to comply with the law. For additional information and to register, please visit the Tax Forums website.

The Tax Forum dates and locations are:

City	Dates
Orlando, Florida	June 19 - 21
Atlanta, Georgia	July 10 - 12
San Diego, California	July 17 - 19
Las Vegas, Nevada	July 31 - August 2
Chicago, Illinois	August 21 - 23
New York City, New York	August 28 - 30

Mark Your Calendar

Stay on top of your retirement plan's deadlines! Here are some important dates in the upcoming months for calendar-year plans; non-calendar-year plans must adjust these dates.

June 30: Distribute excess contributions and excess aggregate contributions from 401(k) or 403(b) plans with an eligible automatic contribution arrangement covering all eligible employees to correct failed ACP tests (and ADP tests in 401(k) plans) to avoid the Internal Revenue Code section 4979 10% excise tax.

July 15: Make second quarter 2012 contribution installment for single-employer defined benefit plans.

July 31: File 2011 Form 5500

- File with DOL/EFAST2
    - Form 5500, *Annual Return/Report of Employee Benefit Plan*, or
    - Form 5500-SF, *Short Form Annual Return/Report of Employee Benefit Plan*, or

- File with IRS
  - Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses)*, or
  - Form 5558, *Application for Extension of Time to File Certain Employee Plan Return*, to request a 2 ½ -month extension (until October 15, 2012), and
  - Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*.

DOL News

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to DOL/EBSA's homepage for updates.

Guidance on Fee Disclosure Rules

On May 7, DOL/EBSA issued a set of frequently asked questions and answers in Field Assistance Bulletin 2012-02 to help plan administrators and service providers comply with the requirements of new rules improving the transparency of fees and investment expenses in retirement plans.

On October 20, 2010, DOL/EBSA published a final rule to help America's workers manage the money they have contributed to their 401(k) or similar retirement plan accounts by requiring the disclosure of information regarding the fees and expenses associated with their plans. This participant-level disclosure rule, under ERISA section 404(a), also ensures that workers receive core investment information in a format they can use to meaningfully compare their plan's investment options.

A second and related fee transparency rule requires, in part, that certain covered service providers furnish specified information to plan administrators so that they, in turn, can comply with their disclosure obligations to participants. This second rule, published by DOL/EBSA on February 3, 2012, under ERISA section 408(b)(2), requires disclosures to employers sponsoring pension and 401(k) plans about the administrative and investment costs associated with providing the plans to their workers.

Guidance for Apprenticeship and Training Plans

On April 2, DOL/EBSA issued Field Assistance Bulletin 2012-01 providing guidance on the use of plan assets to pay for graduation ceremonies and advertising expenses.

Outreach and Education

DOL/EBSA is holding free full-day seminars for small businesses on "Getting It Right…Know Your Fiduciary Responsibilities" in Boston and New York City. For more information on these seminars, as well as half-day workshops and webcasts, visit www.dol.gov/ebsa.

DOL/EBSA recently launched a series of public forums around the country to increase awareness about saving for retirement and managing retirement savings. Working with organizations such as the Consumer Financial Protection Bureau, the Women's Institute for a Secure Retirement, the Center for Retirement Research at Boston College and many others, the forums cover topics including the true cost of retirement, what to focus on when making retirement decisions and how to protect yourself from becoming a victim of financial abuse.

For notice of upcoming forums or other events, including seminars for small businesses sponsoring health benefit plans, subscribe to DOL/EBSA's homepage.

DOL/EBSA's Assistant Secretary, Phyllis C. Borzi, recently began a biweekly email (subscribe) about what you need to know about saving for retirement before it's too late. You can expect to receive educational materials about retirement plans, notices about public events and updates about policies that protect your retirement savings. Subscribe to receive the biweekly updates.